

AMENDED IN SENATE JUNE 30, 2003

AMENDED IN SENATE JUNE 18, 2003

AMENDED IN ASSEMBLY MAY 7, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

AMENDED IN ASSEMBLY MARCH 25, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

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**ASSEMBLY BILL****No. 1247**

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**Introduced by Assembly Member Aghazarian**

February 21, 2003

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An act to amend Section 25247 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1247, as amended, Aghazarian. Hazardous waste facility: postclosure.

(1) Existing law requires the owner or operator of a hazardous waste facility to submit a hazardous waste facility closure and postclosure plan to the Department of Toxic Substances Control and to the California regional water quality control board for the region in which the facility is located. The department is required to review the plan and to approve the plan if the department makes specified findings. A violation of the hazardous waste control law, including any requirements issued or adopted pursuant to the hazardous waste control law, is a crime.

This bill would require the department to impose the requirements of a hazardous waste facility postclosure plan by issuing a postclosure permit, issuing an enforceable order, or entering into an enforceable agreement. The bill would require the postclosure plan imposed or modified pursuant to an enforcement order, a permit, or an agreement to be approved in compliance with the California Environmental Quality Act and would require the department, before approving or modifying a hazardous waste facility postclosure plan, to provide meaningful opportunity for public comment. The bill would require the owner or operator who submits the plan for approval and who is issued an enforceable order or enforceable agreement, at the time the plan is submitted, to pay specified fees or enter into a specified cost reimbursement agreement to reimburse the department for its costs.

The bill would authorize the department to take specified actions, in addition to other remedies available under state law, to enforce a postclosure plan imposed in the form of an enforcement order or enforcement agreement.

The provisions of the bill would not apply to a postclosure plan for which a final or draft permit has been issued by the department on or before December 31, 2003. The bill would provide that the department may only impose postclosure plan requirements through an enforcement order or an enforceable agreement until January 1, 2007, except as specified. If the department determines that a postclosure permit is necessary to enforce a postclosure plan, the bill would authorize the department to rescind and replace an enforcement order or an enforceable agreement by issuing a postclosure permit for the hazardous waste facility, in accordance with specified procedures.

Because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

SECTION 1. Section 25247 of the Health and Safety Code is amended to read:

25247. (a) The department shall review each plan submitted pursuant to Section 25246 and shall approve the plan if it finds that the plan complies with the regulations adopted by the department and complies with all other applicable state and federal regulations.

(b) The department shall not approve the plan until at least one of the following occurs:

(1) The plan has been approved pursuant to Section 13227 of the Water Code.

(2) Sixty days expire after the owner or operator of an interim status facility submits the plan to the department. If the department denies approval of a plan for an interim status facility, this 60-day period shall not begin until the owner or operator resubmits the plan to the department.

(3) The director finds that immediate approval of the plan is necessary to protect public health, safety, or the environment.

(c) Any action taken by the department pursuant to this section is subject to Section 25204.5.

(d) (1) To the extent consistent with the federal act, the department shall impose the requirements of a hazardous waste facility postclosure plan on the owner or operator of a facility through the issuance of an enforcement order, entering into an enforceable agreement, or issuing a postclosure permit.

(A) A hazardous waste facility postclosure plan imposed or modified pursuant to an enforcement order, a permit, or an enforceable agreement shall be approved in compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(B) Before the department initially approves or significantly modifies a hazardous waste facility postclosure plan pursuant to this subdivision, the department shall provide a meaningful opportunity for public involvement, which, at a minimum, shall include public notice and an opportunity for public comment on the proposed action.

(C) For the purposes of subparagraph (B), a “significant modification” is a modification that the department determines

1 would constitute a class 3 permit modification if the change were  
2 being proposed to a hazardous waste facilities permit. In  
3 determining whether the proposed modification would constitute  
4 a class 3 modification, the department shall consider the similarity  
5 of the modification to class 3 modifications codified in Appendix  
6 I of Chapter 20 (commencing with Section 66270.1) of Division  
7 4.5 of Title 22 of the California Code of Regulations. In  
8 determining whether the proposed modification would constitute  
9 a class 3 modification, the department shall also consider whether  
10 there is significant public concern about the proposed  
11 modification, and whether the proposed change is so substantial or  
12 complex in nature that the modification requires the more  
13 extensive procedures of a class 3 permit modification.

14 (2) This subdivision does not limit or delay the authority of the  
15 department to order any action necessary at a facility to protect  
16 public health or safety.

17 (3) If the department imposes a hazardous waste facility  
18 postclosure plan in the form of an enforcement order or  
19 enforceable agreement, in lieu of issuing or renewing a postclosure  
20 permit, the owner or operator who submits the plan for approval  
21 shall, at the time the plan is submitted, pay the same fee specified  
22 in subparagraph (F) of paragraph (1) of subdivision (d) of Section  
23 25205.7, or enter into a cost reimbursement agreement pursuant to  
24 subdivision (a) of Section 25205.7 and upon commencement of  
25 the postclosure period shall pay the fee required by paragraph (9)  
26 of subdivision (c) of Section 25205.4. For purposes of this  
27 paragraph and paragraph (9) of subdivision (c) of Section 25205.4,  
28 the commencement of the postclosure ~~permit~~ *period* shall be the  
29 ~~date of issuance~~ *effective date* of the postclosure permit,  
30 enforcement order, or enforceable agreement.

31 (4) In addition to any other remedy available under state law to  
32 enforce a postclosure plan imposed in the form of an enforcement  
33 order or enforcement agreement, the department may take any of  
34 the following actions:

35 (A) File an action to enjoin a threatened or continuing violation  
36 of a requirement of the enforcement order or agreement.

37 (B) Require compliance with requirements for corrective  
38 action or other emergency response measures that the department  
39 deems necessary to protect human health and the environment.



1 (C) Assess or file an action to recover civil penalties and fines  
2 for a violation of a requirement of an enforcement order or  
3 agreement.

4 (e) Subdivision (d) does not apply to a postclosure plan for  
5 which a final or draft permit has been issued by the department on  
6 or before December 31, 2003, unless the department and the  
7 facility mutually agree to replace the permit with an enforcement  
8 order or enforceable agreement pursuant to the provisions of  
9 subdivision (d).

10 (f) (1) Except as provided in paragraphs (2) and (3), the  
11 department may only impose postclosure plan requirements  
12 through an enforcement order or an enforceable agreement  
13 pursuant to subdivision (d) until January 1, 2007.

14 (2) This subdivision does not apply to an enforcement order or  
15 enforceable agreement issued prior to January 1, 2007, or an order  
16 or agreement for which a public notice is issued on or before  
17 January 1, 2007.

18 (3) This subdivision does not apply to the modification on or  
19 after January 1, 2007, of an enforcement order or enforceable  
20 agreement that meets the conditions in paragraph (2).

21 (g) If the department determines that a postclosure permit is  
22 necessary to enforce a postclosure plan, the department may, at any  
23 time, rescind and replace an enforcement order or an enforceable  
24 agreement issued pursuant to this section by issuing a postclosure  
25 permit for the hazardous waste facility, in accordance with the  
26 procedures specified in the department's regulations for the  
27 issuance of postclosure permits.

28 (h) Nothing in this section may be construed to limit or delay  
29 the authority of the department to order any action necessary at a  
30 facility to protect public health or safety, or the environment.

31 SEC. 2. No reimbursement is required by this act pursuant to  
32 Section 6 of Article XIII B of the California Constitution because  
33 the only costs that may be incurred by a local agency or school  
34 district will be incurred because this act creates a new crime or  
35 infraction, eliminates a crime or infraction, or changes the penalty  
36 for a crime or infraction, within the meaning of Section 17556 of  
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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